

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
April 26, 2006 Session

**JUDITH GAIL SAIN SHETTLEWORTH v. DOYLE EDWARD  
SHETTLEWORTH**

**Appeal from the Chancery Court for Coffee County  
No. 02-180     Buddy D. Perry, Judge**

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**No. M2005-01238-COA-R3-CV - Filed on June 1, 2006**

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Husband appeals the award of alimony in futuro and the amount of alimony awarded to Wife. Finding the parties were married for thirty years, that Wife is economically disadvantaged, and that Wife's needs and Husband's ability to pay are supported by the record, we affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed**

FRANK G. CLEMENT, JR., J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., P.J., M.S., and JERRY SCOTT, SR. J., joined.

Jeffrey D. Ridner, Tullahoma, Tennessee, for the appellant, Doyle Edward Shettleworth.

Vanessa A. Jackson, Tullahoma, Tennessee, for the appellee, Judith Gail Sain Shettleworth.

**OPINION**

Doyle Edward Shettleworth, Husband, and Judith Gail Sain Shettleworth, Wife, married in 1972. Their marriage produced two children, both of whom were adults at the commencement of these proceedings.

This action was commenced by the filing of a complaint for absolute divorce by Wife on April 29, 2002. Husband filed an answer and a counter-complaint for divorce. Thereafter, the trial court entered an order directing the parties to mediation. The mediation produced a resolution of all issues except alimony. As a consequence, the trial court entered a Final Decree of Divorce on August 25, 2003 declaring the parties divorced pursuant to irreconcilable differences, in which was incorporated a Marital Dissolution Agreement that provided an equitable division of the marital assets and debts. The court additionally entered a Qualified Domestic Relations Order. Thereafter, the parties elected to submit the issue of alimony to the trial court based upon an Agreed Stipulations of Fact. No evidence other than the stipulations was presented to the trial court. The Agreed Stipulations of Fact states in its entirety:

Come the Plaintiff and Defendant, through their respective attorneys, and submit the following stipulations of fact to the Court:

1. Doyle Shettleworth is fifty-five years old. He has a high school education. He is employed as an iron worker at Arnold Engineering Development Center. He earns an hourly rate of \$22.60 through his employment.

2. Judy Shettleworth is fifty-two years old. She has a high school education. She has been employed as an office assistant at Sain Construction Company for approximately thirty years. She earns an hourly rate of \$10.00 through her employment.

3. Through analysis of the joint tax returns of the parties, from 1994 through 2001, Doyle Shettleworth averaged yearly income of \$36,819.13 and Judy Shettleworth averaged yearly income of \$19,211.37.

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8. Doyle Shettleworth has average monthly expenses of \$2,514.50, including a mortgage payment of \$820.00 and \$200.00 per month to feed his horses, chickens and dogs. Judy Shettleworth has average monthly expenses of \$1,980.10.

9. Judy Shettleworth has an expected interest in an inheritance of approximately \$37,134.51. One of the parcels of real property that she is inheriting (*described in the Defendants Trial Brief as being assessed at \$87,500.00*) is subject to a life estate of her step-mother who is seventy-two years old.

10. After the division of the pension and 401(k) plans of Doyle Shettleworth and Judy Shettleworth, both parties received the amount of \$93,041.77.

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12. It is stipulated that in her deposition testimony, Judy Shettleworth testified that she had obtained bonuses from her employer in the range of \$300.00, \$500.00 and one bonus of \$1,000.00. It is stipulated that in 1996, she received a bonus of \$649.70, which was taxed. It is stipulated that in 1997, she received a bonus of \$541.42, which was taxed. It is stipulated that in 1999, she received a bonus of \$1,082.84, which was taxed. It is stipulated that in 2001, she received a bonus of \$1,500.00, which was taxed. All of said bonus [sic] have been included in the income amounts used to calculate the average income of the parties as set forth in Paragraph 3, above.

13. It is stipulated that after the separation of the parties in October of 2002 through March of 2004 when the property was refinanced, Doyle Shettleworth lived exclusively at the residence and made all mortgage payments and property insurance

payments on the real estate. The mortgage payments were \$880.00 per month for eighteen months for a total of \$15,840.00. During the time that he exclusively occupied the residence, Doyle Shettleworth did not pay rent to Judy Shettleworth. It is stipulated that in the equal division of the parties property, Judy Shettleworth relinquished all her rights in the horses and other livestock of the parties to offset the mortgage payments made by Doyle Shettleworth which increased the equity in the real property.

14. It is stipulated that Doyle Shettleworth has high blood pressure, arthritis in his right knee and right shoulder, carpal tunnel syndrome of the hands and vertigo. It is stipulated that Judy Shettleworth has carpal tunnel syndrome of the hands, high blood pressure, arthritis and has been recently advised by her physician that she may require a hysterectomy.

On October 12, 2004 the trial court entered an Order for Payment of Alimony specifying that Husband would pay the sum of \$600.00 per month as alimony in futuro beginning November 1, 2004 and continuing each month thereafter until death, remarriage, or co-habitation with a person of the opposite sex. Husband timely filed this appeal, contending the trial court erred in awarding Wife alimony and in the amount of alimony, contending that it exceeds Wife's need and Husband's ability to pay.

#### ANALYSIS

We review an award of alimony under the abuse of discretion standard. *Herrera v. Herrera*, 944 S.W.2d 379, 388 (Tenn. Ct. App. 1996). If a discretionary decision is within a range of acceptable alternatives, we will not substitute our judgment for that of the trial court simply because we may have chosen a different alternative. *White v. Vanderbilt Univ.*, 21 S.W.3d 215, 223 (Tenn. Ct. App. 1999). When determining whether an award of alimony is appropriate, courts must consider the statutory factors in Tenn. Code Ann. § 36-5-101(d) of which we consider the need of the spouse seeking support and the ability of the other spouse to provide such support to be the most important. *Burlew v. Burlew*, 40 S.W.3d 465, 470 (Tenn. 2001); *Varley v. Varley*, 934 S.W.2d 659, 668 (Tenn. Ct. App. 1996).

There are no hard and fast rules for spousal support decisions. *Anderton v. Anderton*, 988 S.W.2d 675, 682-683 (Tenn. Ct. App. 1998); *Crain v. Crain*, 925 S.W.2d 232, 233 (Tenn. Ct. App. 1996). Alimony decisions require a careful balancing of the factors in Tenn. Code Ann. § 36-5-101(d)(1) and typically hinge on the unique facts and circumstances of the case. *See Anderton*, 988 S.W.2d at 683; *see also Hawkins v. Hawkins*, 883 S.W.2d 622, 625 (Tenn. Ct. App. 1994).

Here, the trial court elected to award alimony in futuro. An award of alimony in futuro is appropriate "where there is relative economic disadvantage and rehabilitation is not feasible in consideration of all relevant factors," including those enumerated in § 36-5-101(d)(1)(E). Tenn. Code Ann. § 36-5-101(d)(1)(C). A benefit of alimony in futuro is that it can be modified in the event of

a substantial and material change in circumstances. “An award of alimony in futuro shall remain in the court's control for the duration of such award, and may be increased, decreased, terminated, extended, or otherwise modified, upon a showing of substantial and material change in circumstances.” Tenn. Code Ann. § 36-5-121(f)(2)(A).

The relevant facts in the record establish the following. The parties were married thirty years. Husband is employed at Arnold Engineering Development Center earning \$22.60 an hour and is in relatively good health for his age. Wife is fifty-two years old, has a high school education, has been employed as an office assistant for thirty years, earns \$10.00 an hour, has carpal tunnel syndrome, high blood pressure, arthritis and has been advised she may require a hysterectomy. Considering these facts, we find no error with the trial court’s decision to award Wife alimony in futuro. That leaves us with the remaining issue, the amount of the award of alimony in futuro.

Trial courts have broad discretion to determine whether spousal support is needed and, if so, the nature, amount and duration of support. *See Garfinkel v. Garfinkel*, 945 S.W.2d 744, 748 (Tenn. Ct. App. 1996). Moreover, appellate courts are disinclined to second-guess a trial judge's spousal support decision unless it is not supported by the evidence or is contrary to the public policies reflected in the applicable statutes. *Bogan v. Bogan*, 60 S.W.3d 721, 727 (Tenn. 2001)(quoting *Kinard v. Kinard*, 986 S.W.2d 220, 234 (Tenn. Ct. App. 1998); *see also Brown v. Brown*, 913 S.W.2d 163, 169 (Tenn. Ct. Ap. 1994). It is also important to recognize that it is not the function of the appellate courts to “tweak” a domestic relations order in the hopes of achieving a more reasonable result than the trial court. *Eldridge v. Eldridge*, 42 S.W.3d 82, 88 (Tenn. 2001).

Considering the relevant facts, which we emphasized above, including specifically the financial needs of Wife and the ability of Husband to pay, we find no error with the trial court’s decision to award Wife \$600 per month as alimony in futuro.

Finding no error, the judgment of the trial court is affirmed and this matter is remanded with costs of appeal assessed against Husband, Doyle Edward Shettleworth.

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FRANK G. CLEMENT, JR., JUDGE